



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2010

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2010-14563

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 394780 (Comptroller ID# 6431956837).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for all records relating to liens the comptroller filed in Bexar County against a specified company, including the company's correspondence about the liens or a request for a redetermination hearing, and any records relating to the case being referred to or adjudicated by the State Office of Administrative Hearings. You state you have released the public lien information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including sections 111.006 of the Tax Code, which protects from disclosure the following types of taxpayer information obtained from an audit of a taxpayer:

all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's book, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer.

Tax Code § 111.006(a)(2). In *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 678-679 (Tex. 1995), the Texas Supreme Court addressed the applicability of section 111.006 of the Tax Code to the Act:

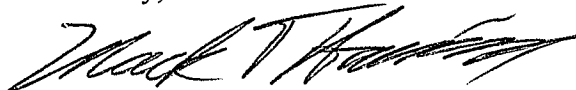
The Tax Code prevents the disclosure of data “obtained” or “derived” from a taxpayer . . . Confidentiality under the Tax Code thus turns on the identity of the *source* of the information. It makes confidential the information obtained or derived from *taxpayers*.

Id. at 676 (citations omitted) (emphasis in original). The court further held a taxpayer’s response to an audit “is unquestionably ‘information . . . obtained by the comptroller . . . during the course of an examination’” for purposes of section 111.006 of the Tax Code. *Id.* at 679 (quoting Tax Code § 111.006). You state the information at issue consists of documents filed by a taxpayer during a redetermination administrative hearing for sales and use tax. Upon review, we agree the submitted information was obtained by the comptroller during the course of an examination of the taxpayer and is, therefore, subject to section 111.006. Accordingly, the comptroller must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 111.006(a)(2) of the Tax Code. As our ruling is dispositive, we need not address your remaining argument against disclosure.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 394780

Enc. Submitted documents

c: Requestor
(w/o enclosures)